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John Zimmerman

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EXAMINER

BROWN, RUEBEN M

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 6/3/08 have been fully considered but they are not persuasive. Applicant argues on page 3, that “notifying the user that the recommendation is based on a celebrity profile is not the same as the affirmative reporting by the profiled celebrity...”. Examiner respectfully disagrees, and first of all points out that the claims do not recite neither the term, “affirmative”, nor the phrase “reporting by the profiled celebrity”.
2. Therefore, in response to applicant's argument throughout the filing, that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., “affirmative”... “reporting **by the** profiled celebrity”, emphasis added) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Instead, claim 1 recites, ‘*reporting the recommendation to the user **through the image** of the celebrity while simultaneously displaying the image of the celebrity...*’, emphasis added. Thus applicant argues a limitation that is not presently recited in the claims. The currently claimed feature is broad enough to read on displaying an image of the celebrity along with the recommendation, as provided by the combination of Herz & Shapiro.

Applicant argues on page 3 thru page 4 that a difference between the references and the recited claims is that “notifying...” [merely] informs the users what profile is being used...and would appear that the notification comes from the system, not the celebrity, while “reporting...” reports recommendation to the user with the appearance during the reporting that the celebrity is making the recommendation to the user. However, “informing the user” as applicant acknowledged is taught by Herz, **is equivalent** to ‘*reporting the recommendation*’, as recited in the claims. Applicant has not explained any functional difference between these phrases.

Applicant continues to argue on page 4 that the combination of references does not meet the newly amended subject matter. However, the combination of Herz & Shapiro teaches one of ordinary skill in the art to associate an image of the celebrity with the reporting/notification to the subscriber of the recommended list. Thus, as pointed out above, ‘*reporting the recommendation through an image of the celebrity while simultaneously displaying the image of the celebrity*’ does not require anything more than presenting the recommendation along with the image of the celebrity that is associated with the instant recommendation, which is provided for by the combination of Herz & Shapira.

As for the additionally claimed limitation, ‘*to create an appearance during the reporting that the celebrity is making the recommendation to the user*’, is an intended use feature. Specifically, to create an appearance..., could be met simply by the image of the celebrity having an expression on their face that makes the customer feel as though the celebrity is personally recommending the list of programs to the user or image inviting the customer to use the

recommended list. However, Shapira does not discuss anything about what type of images of the person that would be associated with the profile. Nevertheless, Kim is directed presenting images in a certain way that conveys a message.

The point of the citation of Kim, with respect to claim 1 is not that the avatar is a fictional character, but that it was known in the art at the time the invention was made, to present image(s) of a person/character to customers, associated with a service, in a manner that makes it seem as though the person/character in the image is presenting the service. For example, Kim teaches that **one of the tasks of the avatar, is to make recommendations** of certain items on a menu, see Para [0084]. The recommendation of items in Kim, corresponds directly with the recommendation of programs in Herz. Thus, operating Kim within the environment of Herz & Shapira would provide for presenting to a customer, a list of recommended programs associated with a celebrity profile, by presenting an image of the celebrity in a manner that makes it appear to the customer that the celebrity is making the recommendation. In Fig. 4A of Kim the avatar asks the customer, "how about some fried chicken?", whereas in Fig. 5E, the avatar asks, "how about some tickets?". Thus Kim is enabled to have the avatar(s) convey whatever message necessary to coax the customer into using the service.

In page 4 thru page 5, applicant argues that Kim is not applicable to the claimed subject matter because Kim discusses that the avatars represent an organization to promote products and services for the organization... and that since at least a portion of the image is typically owned by the organization, a user would naturally think that any recommendation made by the avatar is

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made on behalf of the organization, not by the celebrity himself or herself, citing Kim [0021 & 0030]. However, first of all, it is asserted that the communication discussed above by the avatar, makes it seem to the user that he/she is communicating/interacting with a person, not just a faceless organization or customer service rep.

Secondly, whether or not the celebrity/avatar is making the recommendation on behalf of an organization is not within the scope of the claims. Furthermore, even if such a distinction was relevant, a customer using any system would still need to access whatever database or service interface necessary to get the recommendation. So that even if it appeared that the celebrity himself was making the recommendation, it would still be known to the customer that the recommendation came as a result of a service/service provider that the instant customer has accessed. Thus, the recommendation would still be on behalf of the service provider of this recommendation service, although it is the celebrity who is actually making the recommendation or appearing to make the recommendation.

Therefore, as for the discussion in Kim that the avatar represents an organization to promote products and/or services, the celebrity profile in the claims, and as disclosed in Herz does promote at least the services of the TV programs that are being recommended to the customer. Applicant argues that “an organization is not an individual; it does not have a celebrity profile that can be used as a basis for making lifestyle recommendations”. Notwithstanding this discussion, it is pointed out that the claim broadly recites, *‘reporting the recommendation*

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through an image of the celebrity', emphasis added, which again, does not preclude that the 'image' from being a computer generated image, i.e., avatar image of the celebrity. It is noted that the claims do not recite any requirements or limitations to the scope or nature of the 'image' of the celebrity, (such as what kind of image, how the image is created, or if it is an action image of the celebrity, etc.) other than the image would 'create a certain appearance during the reporting'.

Thus, again applying Kim to the combination of Herz & Shapira would teach one of ordinary skill in the art to create an avatar image of the celebrity, which is then presented to the customer, when that instant celebrity profile is chosen. This avatar image reports the list of recommended items to the customer, as per Kim [0084], which thus meets the claimed subject matter.

Regarding claim 17, applicant argues on page 6 that "the only relevance of Cook to the present claims is the use of the term "synthetic" and the creation of a "synthetic character". There is no discussion or suggestion in Cook to represent a synthetic celebrity or a fictitious character played by a real celebrity, as required in the claims". Applicant's discussion with respect to a real celebrity, a synthetic celebrity or fictitious character played by a real celebrity are intended use arguments. If a synthetic character is not a synthetic celebrity, it is only because the synthetic character is not famous or widely known. However, there is not a patentable difference in this instance. In other words, once it is known to create a profile from a synthetic character, as taught by Cook, it would have been within the ordinary skill of art, to create a profile for instance from

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Ronald McDonald, Mickey Mouse, Forrest Gump, etc, which are all synthetic celebrities or fictitious characters played by a real celebrity. The claimed subject matter does not recite any differences in the creation or purpose of the profile, based on whether the profile appears to be associated with a real celebrity, a synthetic celebrity or fictitious character played by a real celebrity.

However, given the teaching of Herz, that a customer may be provided with a list of recommended TV programs based on their own personal profile, **or alternatively**, based on a profile of a "celebrity", one of ordinary skill in the art would have readily recognized the advantage of providing the customer with other alternative profile choices. One of ordinary skill would have recognized the advantage of also providing the customer with a profile of a synthetic celebrity, or character played by a real celebrity, **since the whole point of Herz col. 49, lines 1-4 is that customers may desire to have recommendations based on a profile different from their own personal profile, for instance from a widely known, i.e., famous person, i.e., a celebrity, maybe even their favorite actor/actress.** Nevertheless, all customers would know for instance that Tom Hanks has played numerous roles in TV shows, plays or movies, e.g., Bosom Buddies, Bachelor Party, Big, Forrest Gump, etc. Hence, the actor Tom Hanks is primarily known to the general public, i.e., customers, by the roles that he has played in these entertainment productions.

To the extent that a customer would be interested in a list of programs recommended based on the profile of a celebrity, Tom Hanks, customers would be aware of and could be

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interested in a list of programs recommended based on the profile of any one or more of the characters played by Tom Hanks, in the entertainment productions. And as discussed above, it would have been within the skill of art to provide the customer of Herz with a variety of different types of celebrity profiles. Therefore the combination of Herz & Cook meets the claimed subject matter, since Cook teaches creation of profile that suggests behavior for humans, actors, etc. In other word, Cook recognizes the benefit of creating a synthetic character or profile, which allows one to see how the character would react to certain situations, e.g., which TV programs would Forrest Gump watch. Herz is silent as to whether the "celebrity" is a real person, synthetic or fictitious character. Thus, applying Cook in the environment of Herz provides one with the option of a profile of a synthetic character, and that character is a celebrity, since Herz already provides that the profile is from a 'celebrity'.

Finally, as discussed, in the final office action, mailed 4/3/2008, the term 'celebrity' is broad term and the claims do not provide any requirements or limitations as to the scope of a 'celebrity'.

In view of the above arguments, the Final Rejection, mailed 4/3/2008 is maintained.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to REUBEN M. BROWN M. Brown whose telephone number is (571) 272-7290. The examiner can normally be reached on M-F(8:30-6:00), First Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Kelley can be reached on (571) 272-7331. The fax phone numbers for the organization where this application or proceeding is assigned is (571) 273-8300 for regular communications and After Final communications.

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/Chris Kelley/
Supervisory Patent Examiner, Art Unit 2623